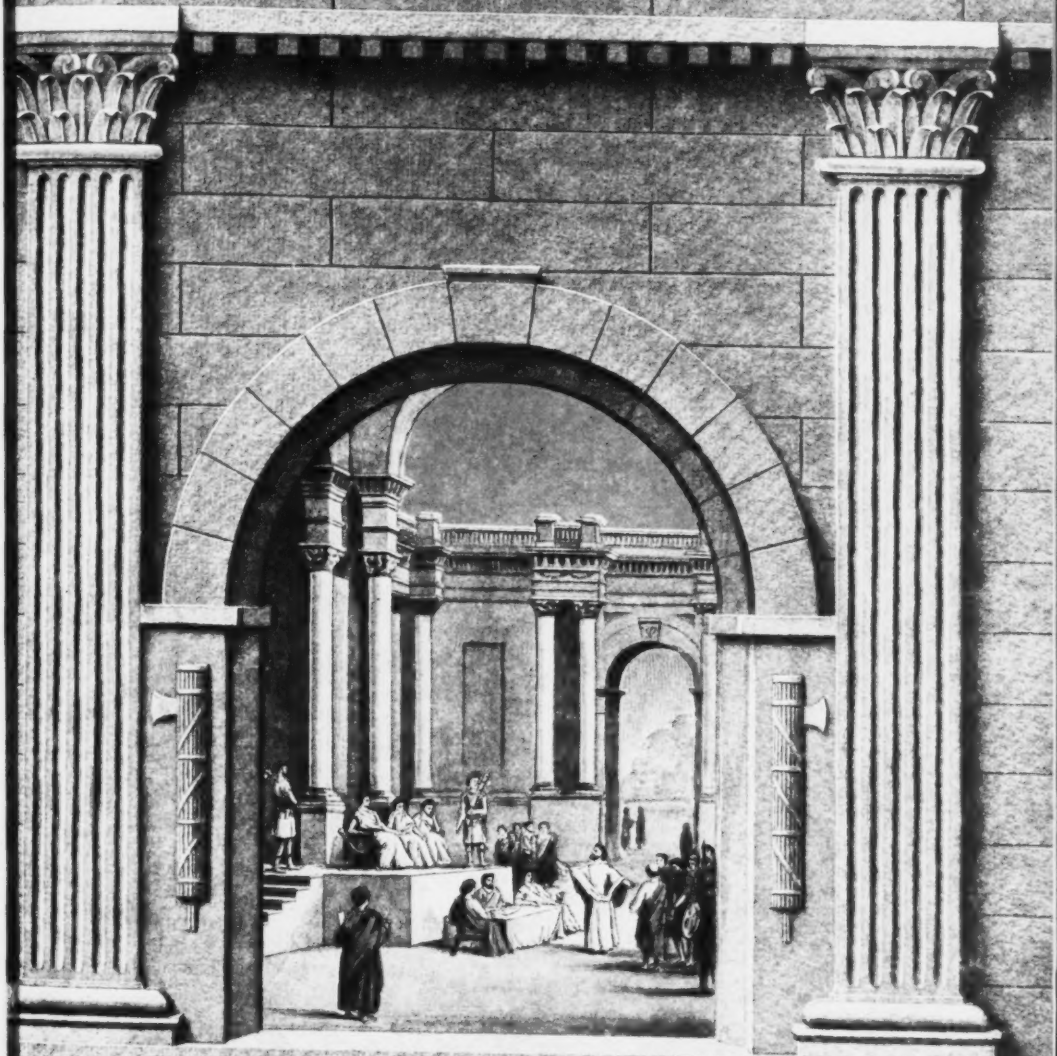
CASE AND COMMENT

JULY, 1908



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Case and Comment

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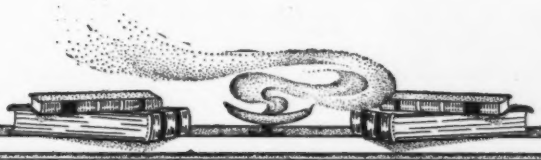

Case and Comment

JULY, 1908

A Fine Point in the Negotiable Instruments Law

A recent Iowa case, and two recent English decisions, have reached different results on a question of no small importance under the uniform negotiable instruments law. The decision of the Iowa court in Vander Ploeg v. Van Zuuk, (Iowa) 13 L.R.A.(N.S.) 490, 112 N. W. 807, holds that an innocent payee who takes a promissory note in which a blank has been wrongfully filled by an agent of the maker cannot be protected, under the uniform negotiable instruments law, as a "holder in due course," to whom the instrument is negotiated after completion,—at least if the payee takes the note for a past indebtedness. The provision just quoted is a modification of the preceding provisions, which gives to the person in possession prima facie authority to fill up blanks, declaring, however, that, in order "that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given, and within a reasonable time." It seems clear, therefore, that the terms of this statute give to a payee no protection as against the wrongful act of the maker's agent in filling up blanks, unless he is within the terms of the exception as a holder in due course, to whom the instrument is negotiated after completion. This the Iowa court holds he is not, and such conclusion is in accordance with the general understanding of the meaning of the language. Men do not ordinarily speak of the delivery of a note to a payee as a negotiation of it, and the accompanying words which describe the transaction as a negotiation of the instrument after completion, to a holder in due course, seem to accentuate the distinction between an original party to the instrument and one to whom it is subsequently transferred. This Iowa decision is supported by the English case of Herdman v. Wheeler [1902] 1 K. B. 361, which is to the same effect, under the English negotiable instruments law, the material provisions of which are practically identical with those of the uniform negotiable instruments law now adopted in many states of the Union. But a later English decision of the court of appeal, in Lloyd's Bank v. Cooke [1907] 1 K. B. 794, distinguishes and well-nigh supersedes the Herdman Case, by holding that, while the negotiable instruments law may not give the payee in such a case any protection against the wrongful act of the maker's agent in filling the blank, he may still invoke the common-law doctrine of estoppel. This doctrine was not discussed in the Iowa case, or in the Herdman Case, in each of which it seems to have been assumed that the rights of the parties must be determined exclusively by the negotiable instruments law. Those decisions probably settle the construction of the statutory provisions; but they leave open the question of the effect of the statute to destroy the right which payees had previously enjoyed to invoke the doctrine of estoppel. The authorities are practically unanimous in favor of the right of the payee in such a case, unless it is taken away by statute.

A material change in the law, seriously increasing the risks of payees, would result, if it should be established that, under the negotiable instruments law, the doctrine of estoppel can no longer be invoked against a maker whose agent has

wrongfully exercised his authority to fill blanks. In that case the payee of a negotiable instrument is allowed less protection than the payee or obligee of a non-negotiable instrument. That a misuse of authority to fill blanks, even in the case of a deed, is subject to the doctrine of estoppel, is illustrated in the case of McCleery v. Wakefield, 76 Iowa, 529, 2 L.R.A. 529, 41 N. W. 210. The improbability that the legislature would intend this result is to be considered in construing the law. The statute expressly provides that "in any case not provided for in this act the rules of the law merchant shall govern." This recognizes the act as a codification of the laws on that subject, superseding the law merchant so far as they conflict. The doctrine of estoppel, as applied to non-negotiable instruments and contracts generally, is obviously unaffected by the statute. It may be argued, therefore, that the provisions in the negotiable instruments law with respect to filling blanks were intended to define the extent and limits of that right in case of negotiable paper only, and particularly with respect to the effect of the negotiable character of the instrument as distinguished from other contracts; and that there was no intention to give the payee of a negotiable instrument less protection against the wrongful acts of the maker's agent than would be given him if the instrument had no element of negotiability in it. As between the maker and the payee of an instrument, it may be urged that its negotiable form is of no importance, and that their rights depend upon common-law rules governing contracts, and not upon the law merchant. If so, those rules would not be impliedly superseded by the statute. In expressly saving the rules of the law merchant in cases not provided for in the act, the American statute does not, like the English act, mention common-law rules; but this seems immaterial for the reason that neither statute was intended to codify rules of the common law beyond the scope of the law merchant. In the Lloyd's Bank Case the English court expressly declared that the negotiability of the document constituted no reason why the doctrine of estoppel should not apply, but rather the contrary, as that fact more clearly indicated an intention that the agent should use the instrument as a means of raising money. It seems highly improbable that the intent of the statute was to create this unfavorable discrimination against the payee of a negotiable instrument when compared with the obligee of a non-negotiable contract. In the light of the latest English case applying the doctrine of estoppel, which was not considered in the Iowa case, it may be proper to conclude that this phase of the subject still presents an open question for the courts of this country.

Libeling an Unnamed Judge.

Following the enactment of the New York law against race-track gambling, the press reports say: "A man in authority in Brooklyn stated this afternoon that the race-track people had been in consultation with a supreme-court justice whom they had been trying to bring to their way of thinking, and who had seemed 'sympathetic.'" If this were true, the public would like to know the name of the sympathetic justice who is thus acting as an associate counsel of the plaintiff in a case to be brought before him for judgment. But, if the report is a lie, such a libel on the bench is worse than race-track gambling.

An Era of Greater Honesty.

The Chairman of the Finance Committee of the United States Steel Corporation, Hon. Elbert H. Gary, as reported in Harper's Weekly, declares: "There is a great awakening in this country with relation to better conduct, more decency, more honesty, more re-

sponsibility,—by everybody to everybody. It does not make an atom of difference who brought it about. It is here." Few will doubt the substantial truth of this declaration. But it is altogether a mistake to suppose that this proves that any great change has taken place in the character of the majority of the people. It only means that the conspicuous minority who did disreputable business have been forced by the honest majority to do business more honorably. The greatest fact after all in the whole movement is the awakening of the listless and lethargic public to the consciousness of its own power. Enough has been accomplished to show the people that, if they tolerate fraud and dishonesty, it is their own fault.

An Intense Moment in the Legislature.

Dramatic interest reached its climax in the New York legislature a few days since when the long and doubtful struggle over the anti-race-track gambling bills were passed by the aid of Senator Foelker, who had come, for that vote only, from a sick room in the care of his physician, and whose strength it was feared might fail to stand the strain. Some of the elements of the drama were as stern as those of a classic tragedy. There was a clearly defined moral issue. On the one hand, forces of unselfish moral earnestness were fighting for the honor of the state and the welfare of the public. On the other hand, selfish pecuniary interests were fighting for the privilege of getting money by gambling in defiance of the state Constitution. An aroused public sentiment against race-track gambling in other parts of the country, as well as in New York, had focused the attention of multitudes of people on this issue. The passage of the law, though by the barest majority in the senate, doubtless ends one of the most disgraceful chapters in the legislative history of New York. And the stimulating effect of the final victory may be some compensation for the past demoralization and humiliation of the state.

The Pardon of the Innocent.

The pardon of a person imprisoned awaiting trial cannot often be justified, though it is not unprecedented. The recent pardon of Caleb Powers after years of imprisonment on a charge of murder, during which he had four trials, and was three times convicted, with a disagreement of the jury on fourth trial, ends an extraordinary case.

In view of the outcome of the convictions, reversals, and final disagreement of the jury, it is not probable that a conviction could be obtained on further trial, even if it were assumed that Mr. Powers was guilty, while it is far from certain that an acquittal could be obtained. But a belief in his innocence is held by a great many people, and in the statement of the governor giving his reasons for the pardon he says: "I am firmly convinced that he is beyond all reasonable doubt innocent of the crime charged against him, and that any further prosecution against him for the crime so charged would be a great wrong and against the peace and well-being of the commonwealth." It has been said that this pardon "establishes a curious precedent in criminal procedure." But it is not so. It is shown that the constitutional power of the President to grant reprieves and pardons is upheld even against an attempt of Congress to limit it. This was held in Ex parte Garland, 4 Wall. 333, 18 L. ed. 366, and United States v. Klein, 13 Wall. 128, 20 L. ed. 519. In the latter case Chief Justice Chase said: "Pardon includes amnesty. It blots out the offense pardoned, and removes all its penal consequences." And, as Mr. Justice Field, writing the opinion of the court in the Garland Case, said of the President's power to pardon: "It extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during

their pendency, or after conviction and judgment." This doctrine is further declared in Territory v. Richardson, 9 Okla. 579, 49 L.R.A. 440, 60 Pac. 244, which upheld a pardon granted pending an indictment and before trial; also in People v. Marsh, 125 Mich. 410, 51 L.R.A. 461, 84 Am. St. Rep. 584, 84 N. W. 472, upholding a pardon after conviction and pending a hearing in the supreme court. It must be admitted that a pardon before conviction seems incongruous, and ought to be granted only where peculiar circumstances make it necessary in the interests of justice; but that such a pardon may lawfully be granted under the constitutional power to pardon is clear, unless that power is expressly restricted.

Sale by Promoters to Themselves as a Corporation.

A clear conflict between the supreme judicial court of Massachusetts and the Supreme Court of the United States is made by their recent decisions on the effect of the fiduciary relation of promoters in respect to a sale of property made by them to a corporation which they have organized, when they own all the stock of the company, but when the transaction is in contemplation of a large additional issue of stock, to be sold to the public without disclosure of the profits of the promoters. On such a state of facts, after the public had bought a large issue of the stock, the Massachusetts court held, in Old Dominion Copper Min. & Smelting Co. v. Bigelow, 188 Mass. 315, 108 Am. St. Rep. 479, 74 N. E. 653, that the fiduciary relation of the promoters made them liable for their undisclosed profits on a bill in equity by the corporation. Although the money with which the property was bought by two of the promoters was furnished by a syndicate, to which more than half the stock of the corporation was issued, in addition to stock issued for the property to the two promoters, who had bought it, and one of them who alone held the title to it had since died, it was held that a bill in equity would lie against the other of these two promoters as a sole defendant for a rescission of the sale of the property to the corporation and a restitution of the consideration paid for it. But to a similar bill in the Federal court, against the executors of the deceased promoter, a demurrer was sustained, and the decision affirmed by the circuit court of appeals and finally by the Supreme Court of the United States. Old Dominion Copper Min. & Smelting Co. v. Lewisohn, Adv. S. U. S. 1907, p. 634, 28 Sup. Ct. Rep. 634. The Supreme Court held that, inasmuch as, at the time of the sale of the property to the corporation, the promoters, including the syndicate, owned all the stock, and thus represented both sides of the bargain, they might issue to themselves as much stock in their corporation as they liked in exchange for their conveyance of their land, and that, if there was any wrong done, it was when the innocent public subscribed; that the corporation had no pretense for any standing in court, unless it was by virtue of the position of innocent subscribers, and the invitation of the promoters; that, if the promoters, after starting their scheme, had sold their stock before any subscriptions were taken to purchasers with notice, and then, on their invitation, the public had come in, it did not appear how the company could maintain such a suit. The court intimated that the sale of the property did not constitute a breach of duty to the corporation *nunc pro tunc;* but that the invitation to the public, without disclosure, when acted upon, might be, from an equitable point of view, a fraud upon the subscribers. Without considering, therefore, whether the subsequent purchasers of stock had any personal claim of any kind on which they could maintain a suit, the court held that, inasmuch as there was no wrong committed at the time of the sale by the promoters to themselves as a corporation, and as the corporation did not change its identity by subsequent increase of stockholders, the corporation could not maintain any

suit for the rescission of the sale. Another objection to granting such relief, from what the court calls a business point of view, was said to be that to compel a rescission of the sale as against a single one of those who were parties to the transaction would result in giving a large part of the benefit of such rescission to his own associates in the transaction complained of.

These two eminent courts are thus in direct conflict on this question of the right of a corporation to sue for the rescission of a sale of property to it by its promoters, at a time when they own all the stock of the company; and a very serious question of corporation law is left in great uncertainty.

Expert Evidence as to Typewriting.

It has often been said that forgery is easy now that important documents are usually typewritten. Most people have supposed that the work of typewriters was so uniform that the substitution of one sheet for another could be made almost as a matter of course, with impunity. Comparatively few lawyers are yet aware that, so far from this being true, the detection of forgery in a typewritten instrument is in most cases a matter of well-nigh mathematical demonstration. Doubtless, many forgeries of this kind have been successful, though suspected, because of the erroneous belief that proof of the forgery was impossible. There is a fascinating interest in studying the evidences of forgery in such cases because of the peculiar satisfaction in reaching in most cases a conclusion that is unmistakably true. It is true that detection of a typewritten forgery may be difficult, even impossible, if both the genuine and the spurious pages were written on the same machine and at very nearly the same date. Possibly this will be so if they are written on two machines of the same make, both of which are new. But different machines, even of the same make, will almost certainly have some minute distinguishing differences, and these will be rapidly exaggerated by use. The least slant of a letter, the slightest defect or peculiarity of any kind in it, may distinguish even a new machine from others, and, when used, some characteristics of this kind are certain to appear and increase with time. In case any of these peculiarities of a machine exist, its identification becomes a matter of certainty if a reasonable quantity of its work can be obtained for examination. A broken, bruised, or scarred letter, or one out of line, may positively identify the work of that machine during the period when such defect existed. And, if in a letter book or otherwise continuous samples of the work of the machine are available for inspection, it can be positively determined at what date this peculiarity of the machine first developed. Various defects of this sort appearing successive during a course of years make it possible to fix positively the time when any particular specimen of work done on that machine was made. In these and similar ways a competent expert can often prove to a demonstration that a forged document, or portion of a document, could not possibly have been made when and by the machine that made the genuine document. Perhaps no one has done so much to discover the possibilities of these proofs of forgery in typewriting as Albert S. Osborn, of Rochester, New York, who has written articles during several years past in various journals showing by explanation and illustrations the certainties of proof in this class of cases. But the field is a large one, and there are already many experts able to detect and prove the existence of such forgeries. Yet, it is unfortunately still true that many attorneys are unaware of the extent to which this line of evidence has been developed, and, as a result, in some cases they permit typewritten forgeries to go unchallenged when they ought to be detected and proved spurious.

CORRESPONDENCE

EDITOR OF CASE AND COMMENT:—

A short time ago a copy of an able article written by James Parker Hall, Dean of the University of Chicago, was received at the U. S. C. College of Law. I have read and re-read the article with much interest, because it deals with a subject of great importance to all law colleges and to the entire legal profession. The whole system of law-school training is of recent development. Although great things have been accomplished in the framing of courses of study and in the perfecting of systems of instruction, yet many matters pertaining to colleges of law are yet in their infancy. The question of law school degrees is of great importance in itself, but of even greater importance in its relation to, and effect upon, the incentives which cause the student to pursue his study in a law school rather than in an office, and its bearing upon the length and make-up of courses of study.

At the last meeting of the American Bar Association the committee on legal education, in its report, proposed that the association should recommend to the various state legislatures certain rules to secure uniformity in law degrees. By these rules it is provided that "an L. B. should be conferred by law schools maintaining a two years' course; an LL. B. for three years of legal study; an LL. M. for four years, of which one should be postgraduate; and a D. C. L. or J. D. for five years, of which two should be postgraduate."

Action on this report was deferred until the next meeting of the association. Probably many of the state legislatures will enact laws in accordance with its final recommendation. It was, no doubt, intended, in order that the question when settled shall be decided wisely, that it be given full and general discussion. The writer believes that the plan recommended by the committee is almost an ideal one.

It must be apparent to anyone interested in the subject that there is need for some action which will secure uniformity in the granting of law degrees. At the present time some schools confer the degree of LL. B. for two years', and others for three years', work. The term and make-up of the course required for LL. M. is not uniform; the degree of J. D. is conferred by some schools on the completion of a three years' course, and is used by others as a postgraduate degree. Now that variations in the use of degrees are becoming common, there is nothing to prevent any law school which gives a slightly different course, or has a new entrance requirement and wishes to emphasize the distinction, from inventing another degree, and so on without end; and there is no reason why a one-year or a correspondence course may not lead to the degree of LL. B. or J. D.

The confusion that already exists in the granting of legal degrees detracts greatly from their value. With every added degree in use, there must be a corresponding reduction in the dignity and respect which attaches to each. Even now, when, upon an appropriate occasion, one possessing a degree wishes to write it after his name, neither the public at large, nor the average member of the bar, can tell what grade or degree of legal education it represents, unless there is appended thereto a description of the course of study which he has taken and the entrance requirements of the school from which he graduated. Nor is the mystery cleared by adding the name of the Alma Mater, since schools of the highest standing grant the degree of LL. M. on the completion of greatly varying courses, both as to length and composition; and the degree of J. D. is put to almost as many uses as there are schools which issue it. The value of a degree depends entirely upon the knowledge of those who see it as to what it represents. If they do not understand what degree of education it attests that its possessor has acquired, he might as well place after his name Chinese hieroglyphics or punctuation marks. There is no intrinsic value in the letters LL. D. or D. C. L. No other profession finds it necessary to use as many degrees as does the legal profes-

sion. Some medical schools require no college work, some require two and some four years' college preparation for entrance; but their graduates receive the same degree as do those which require only a high-school course.

Every reason which sanctions the use of degrees at all urges that they be used with uniformity. Therefore, since it is a fact that those who grant the different legal degrees have caused confusion by their indiscriminate use, it seems apparent that the whole question should be cleared by legislation.

If, then, we conclude that the granting of legal degrees should be regulated, let us consider of what that regulation shall consist.

Mr. Hall, in his article, says: "In the main, this latest report appears to be governed by the principle that substantial distinctions in legal education should be marked by appropriate distinctions in law degrees. Granting the excellence of this principle, it seems to the writer that the committee has departed from it in failing to approve the use of J. D. as a first degree in law by those schools that regularly require a college education for admission. The distinctions recognized in the report are all based upon the length of time spent in legal study. Another distinction, based upon the extent of preparation for legal study, is at present even more important than some of those recognized by the committee, and this the majority ignores."

In other words, he agrees with the committee that distinctions in "legal education" should be marked by appropriate distinctions in law degrees, but takes the position that prior education should be distinguished by a legal degree. According to the committee, "legal education" only, not preparatory training, should be the basis of distinctions in law degrees. Certain schools of high standing require the applicant for regular admission to have completed a college course. These schools, at the end of three years' study, grant the degree of J. D., instead of LL. B., which is the degree granted by other schools with a three-year course in law. It is said that the sole purpose of this is to distinguish the student with the college preparatory course from the one who has not as good a preparatory education. The student who has completed the college course already has received his degree of A. B. or some other appropriate degree. It belittles that preparatory degree to say that still another degree is necessary to distinguish the college graduate from the man who has only an academic education. It is the purpose of legal degrees to mark substantial distinctions "in legal education," not to indicate the extent of the lawyer's preparatory work. The liberal arts course has its appropriate degree. It marks, as clearly as anything can, its holder as one who has acquired a certain education. Everyone knows what that degree stands for. The addition of another degree can add nothing to it, but, on the other hand, will only serve to confuse. The need is not for more, but for fewer, degrees in law. If we are to have two, three, four, and five year law courses, the average lawyer and law student, to say nothing of the general public, will have enough difficulty in recognizing the degrees which distinguish on the basis of legal work done without attempting to further emphasize the distinction in a foreign course, which already is marked by its appropriate degree.

Mr. Hall argues for a degree which shall indicate that the recipient began the study of his profession "with the maturity and training afforded by a college education, instead of as a high-school boy." If this principle were carried to its logical conclusion, and thus acted upon, a man who began the study of his profession after having completed a college course has the right to the the degree which shall distinguish him from the one who began it as a high-school boy, no matter what law school the college man graduates from, whether it be from a law school requiring a college education for regular admission or not. If this granting of the distinguishing degree is for the benefit of the man who receives it, then law schools not requiring a college course for entrance should grant the two degrees of LL. B. and J. D. side by side, to men of the same class, the first to

those who had only a high-school course, and the second to those who had a college course when they began the study of law. This would be the logical result, for the only distinction upon which the degree of J. D. would be based by Mr. Hall is that of preparatory work. It seems to the writer that such a proposition is a manifest injustice. But suppose this should be done, and suppose, further, that, as is often the case in such a class, the men with the college preparation rank only as medium students and the men who began as high-school boys rank at the top, with what degree of respect would the degree of J. D. then be held? It would be just as fair in a college of liberal arts to overlook the men who have stood at the head of their classes throughout a four years' course and grant the highest honors to those who have been only mediocre students because the latter, perchance, prior to their taking the liberal arts course, had annexed to their names a degree of LL. B. If Mr. Hall's position is correct, and the college-educated man is entitled to a distinctive law degree, then the man educated in a law college or a college of theology, who afterwards takes a liberal arts course is entitled to have a new and distinctive degree invented for him. If law degrees are granted for anything but legal education, they become foolish and misleading.

It is true that "wise lawyers recognize the folly of trying to codify a subject before it has fully developed," and it may be that "the time is not ripe to say the last word about American law degrees." The legislation recommended by the committee would not be any more final than other legislation and, whenever a substantially different course in law should be invented, the same committee would, no doubt, and could consistently, recommend the use of a new degree; but, on the other hand, there seems to be no good reason why the last word should not be said now as to law degrees to be conferred upon the completion of law courses as they are now given and until a substantially new course, not in preparatory work, but in law, has developed.

One point made by Dean Hall is certainly well taken,—Why should the J. D. be used for the same purpose as the D. C. L.? If the object is to secure uniformity in law degrees, "there is no need for two different degrees to indicate advanced work." The degree of D. C. L. appropriately represents either Doctor of Civil Law or Doctor of Common Law. The use of J. D. for two years' postgraduate work would provide two degrees for practically the same course; but, if Dean Hall is consistent in his reasoning, it seems to the writer that the same argument which he puts forth to show that J. D. should not be given for two years' postgraduate work would lead to the conclusion that it is not appropriate as a degree to be granted at the end of three years' study, for in the latter case it admittedly stands for exactly the same work as does the degree LL. B.

Mr. Hall seems to assume that the object intended to be attained by the regulation of the granting of law degrees is the encouragement of greater preparatory work on the part of those who would enter the profession. In this the writer thinks he is mistaken. It is true that there is great need of more general preparatory education: we may even agree that that need is more urgent than is the need for the regulation of law degrees; but it is hardly conceivable that the prospect of securing the degree of J. D., instead of LL. B., would ever cause anyone to take three or four years in a college of liberal arts. The remedy for inadequate preparatory work is to be found in direct legislation requiring such preparation, which has been recommended by the American Bar Association for several years, and has been enacted in several states. Surely the committee did not expect, by the regulation of law degrees, to aid the cause of better preparatory education. Their sole object was to remedy the evils arising from a lack of uniformity in legal degrees.

Since the granting of the degree of J. D. after three years' satisfactory work in a law school following a college course indicates no additional honor to that already possessed by the re-

cipient, what reason is there for its existence? Why has it ever been granted? Merely as a distinction, not to the student, but to the school which grants the degrec. There is competition and rivalry among law schools as well as among other institutions of learning. The man who has already finished the college course is attracted by a degree which will further emphasize his distinction. But every school should base its claims to preferment upon its merit. The few schools that now grant the degree of J. D. are schools of high standing, and can all well afford to rest on their merit. If the advantages of securing a college education preparatory to the study of law outweigh the disadvantages of such a course, those law schools which require it will demonstrate the fact by their continued success. Let the misuse of legal degrees be prevented by statute if necessary, so that law schools will not be found granting degrees for work done in liberal arts, or any other than a law course. Let all who have the cause of legal education at heart join in maintaining the dignity of legal degrees. Such unselfish and I believe wise action is sure to result in great good to the whole legal profession and to all high-class law schools, including those who would find it necessary to give up the granting of the degree of J. D.

Gavin William Craig.

Los Angeles, Cal.,
June 8th, 1908.

AMONG THE NEW DECISIONS

Adverse possession. In harmony with the few other decisions on the subject, it is held, in Salt Lake Invest. Co. v. Fox (Utah) 90 Pac. 564, 13 L.R.A.(N.S.) 627, that possession under a tax-sale certificate is not adverse until the expiration of the redemption period.

The right of one in possession of property as licensee to secure, because of his possession, adverse title to property of an adjoining owner which he occupies, is denied in Davis v. Owen (Va.) 58 S. E. 581, 13 L.R.A.(N.S.) 728, which seems to be a case of first impression on this subject.

A parol grant of an easement which is void under the statute of frauds is held, in Lechman v. Mills (Wash.) 91 Pac. 11, 13 L.R.A.(N.S.) 990, to be sufficient to form the basis for an adverse possession which will ripen into title by lapse of time.

Arrest. The right of an officer to arrest without a warrant one using abusive language toward him, or interfering with him in the performance of his duty, is sustained in Myers v. Dunn (Ky.) 104 S. W. 352, 13 L.R.A.(N.S.) 881.

Attachment. Where goods are sold and delivered upon condition that the title shall not pass to the vendee unless the price agreed upon is paid, it is held, in McIver v. Williamson-Halsell-Frazier Co. (Okla.) 92 Pac. 170, 13 L.R.A. (N.S.) 696, in harmony with the other decisions on the subject, that the vendee has no attachable interest in the property until the performance of the condition.

Board of health. See Health.

Bonds. After an elaborate and theoretical discussion of the doctrine of *ultra vires,* it is held, in Bell v. Kirkland, 102 Minn. 213, 113 N. W. 271, 13 L.R.A. (N.S.) 793, that a contractor's bondsmen will not be permitted to set up the fact that the contract between the municipality and the contractor was irregular, as a defense to an action brought upon the bond by materialmen for material furnished to the contractor.

Brokers. In a novel case in regard to the right to compensation of an agent employed by a firm engaged in colonizing to sell lands on commission, under a contract providing that he should

receive a certain commission for sales made by himself, and a less commission on lands sold by the employer or its other agents with his assistance, it is held that a sale, within the meaning of the contract, was not effected by a contract by which the owners of the land, being desirous of securing irrigation in order to promote its sale, conveyed it to an irrigation company the value of whose property was less than the value of the lands, receiving therefor, in addition to 49 per cent of the stock of the latter company, an amount of its bonds sufficient to equalize the interests of the respective parties in the assets of the corporation. Close v. Browne, 230 Ill. 228, 82 N. E. 629, 13 L.R.A.(N.S.) 634.

Buildings. See Constitutional Law.

Cancelation of contracts. See Corporations.

Carriers. A stipulation in a bill of lading that claims for injury to the property carried must be made within thirty days after its delivery at destination is held, in Liquid Carbonic Co. v. Norfolk & W. R. Co. (Va.) 58 S. E. 569, 13 L.R.A.(N.S.) 753, to be valid and enforceable, notwithstanding a statute which provides that no contract shall exempt a common carrier from its liability as such which would exist had no contract been made.

Chattel mortgages. On the much-disputed question whether a chattel mortgage fraudulent as to a portion of the property may be upheld as to the remainder, it is held, in Eastman v. Parkinson (Wis.) 113 N. W. 649, 13 L.R.A.(N.S.) 921, that a chattel mortgage of stock in trade and other property, not characterized by actual fraud as to creditors of a mortgagor, may be constructively fraudulent as to them respecting the stock, and valid as to the other property.

Commerce. See Taxes.

Constitutional Law. Contrary to what seems to be the weight of authority as to the power of the legislature to permit an appeal to the judiciary from tax assessments, the decisions on which questions are limited, it is held, in Silven v. Osage County (Kan.) 92 Pac. 604, 13 L.R.A.(N.S.) 716, that the assessment of property for purposes of taxation is not a judicial function, and that therefore a statute providing for an appeal from the county board of equalization to the district court is unconstitutional and void.

An ordinance requiring a permit from the city as a prerequisite to the erection of a house is held, in Fellows v. Charleston (W. Va.) 59 S. E. 623, 13 L.R.A.(N.S.) 737, to be a valid exercise of the police power, and not repugnant to the Federal Constitution.

The revocation by a board of health of a permit to sell milk, without affording the holder of the permit a notice or opportunity to be heard, is held, in People ex rel. Lodes v. Health Department, 189 N. Y. 187, 82 N. E. 187, 13 L.R.A.(N.S.) 894, not to be a violation of due process of law, the powers of the members of the board of health being administrative merely, and not judicial.

See also Poll Tax.

Contagious disease. See Municipal Corporations.

Contracts. A contract to pay for preparing a defense and furnishing legal services to secure the acquittal of the brother of the promisor, who is accused of a crime, is held, in Barrett v. Towne (Mass.) 82 N. E. 698, 13 L.R.A.(N.S.) 643, not to be terminated by the death of the promisor; and his estate is held to be liable for services rendered under the contract after his death.

A contract by a postmaster, for a consideration, to locate the postoffice in a certain building, is held, in Benson v. Bawden, 149 Mich. 584, 113 N. W. 20, 13 L.R.A.(N.S.) 721, to be void as contrary to public policy.

To render a transaction voidable on account of the drunkenness of a party to it, it is held, in Martin v. Harsh, 231 Ill. 384, 83 N. E. 164, 13 L.R.A.(N.S.) 1000, that the drunkenness must have been such as to drown reason, memory, and judgment, and to impair the mental faculties to such an extent as to render the party *non compos mentis* for the time being.

The right of a county board, just be-

fore the expiration of the terms of its members and after the election of their successors, to exercise the statutory authority to enter into a contract for the county printing for a term of two years, is sustained in Picket Pub. Co. v. Carbon County (Mont.) 92 Pac. 524, 13 L.R.A.(N.S.) 1115, although such contract will extend over almost the entire life of the succeeding board.

See also Bonds; Carriers; Corporations; Mandamus.

Corporations. One who has executed to a corporation an oil and gas lease is held, in Harris v. Independence Gas Co. (Kan.) 92 Pac. 1123, 13 L.R.A.(N. S.) 1171, to have no right to maintain an action to cancel the portion thereof relating to oil, on the ground that the only purpose of the company's existence, mentioned in its charter, is "to dig or mine for natural gas and sell the same for heat and lighting purposes."

Courts. The exclusiveness of the jurisdiction of the court of last resort to issue remedial writs for prerogative purposes is sustained in the much criticized case of People ex rel. Graves v. District Court, 37 Colo. 443, 86 Pac. 87, 13 L.R.A.(N.S.) 768.

See also Constitutional Law; State.

Covenants. See Judgment.

Criminal law. Following the great weight of authority, the case of State v. Walton (Or.) 91 Pac. 490, 13 L.R.A. (N.S.) 811, holds that absence of opportunity to plead in a prosecution for felony is fatal to conviction, although accused manifests no desire to enter a plea, and there is nothing to show that he was in any way injured by not being given an opportunity to do so.

Deeds. The future interest which a son acquires in consequence of the remarriage of his mother under a statute prohibiting a widow, after her second marriage, from selling or conveying her interest in her prior husband's real estate, and providing that, at her death, the title shall vest in her children by her former husband, is held, in McAdams v. Bailey (Ind.) 82 N. E. 1057, 13 L.R.A.(N.S.) 1003, to pass by way of estoppel under a warranty deed executed by the mother and son, which purports to convey all the interest by right of inheritance which the grantors acquired from the husband's estate, and contains recitals to the effect that the interest conveyed by the son is the two-ninths interest which he inherited directly from his father's estate, and any other interest which might accrue to him after the death of his mother in consequence of her second marriage.

See also Reformation of Instruments.

Divorce. See Marriage.

Dower. See Judgment.

Drugs and druggists. See Negligence.

Drunkenness. See Contracts; Homicide.

Elections. The candidate receiving the next highest number of votes for the office of county assessor is held, in State ex rel. Clawson v. Bell (Ind.) 82 N. E. 69, 13 L.R.A.(N.S.) 1013, not to be entitled to contest the right of the candidate receiving the highest number to hold that office because of the latter's ineligibility by reason of not being a freeholder.

Eminent domain. Under a Constitution providing that private property shall not be taken or damaged for public use without just compensation, it is held, in Sallden v. Little Falls, 102 Minn. 358, 113 N. W. 884, 13 L.R.A. (N.S.)790, that a property owner is entitled to compensation for injuries occasioned to his property by reason of the first establishment of a street grade by the municipality and the improvement of the streets in conformity therewith.

Equitable mortgage. That an agreement for support in consideration of conveyance may be the basis of an equitable lien on the property is recognized in Abbott v. Sanders (Vt.) 66 Atl. 1032, 13 L.R.A.(N.S.) 725, where it is held that, upon breach of the condition, the conveyance may be foreclosed by bill as though it were a mortgage.

Equity. In accordance with the well-established principle of equity jurisprudence that a court of equity, having once taken jurisdiction over a matter, will retain it to give all necessary re-

lief, even though it is thereby required to pass upon strictly legal questions, it is held, in Shedd v. Seefeld, 230 Ill. 118, 82 N. E. 580, 13 L.R.A.(N.S.) 709, that a court of equity which has appointed a receiver may entertain a petition to ascertain the damages for which the property is liable because of his tort; and that no constitutional right to trial by jury is thereby interfered with.

Estoppel. One who takes a contract or bond for the conveyance of property from a third person to defraud the creditors of another who had the legal title to the property, but represented it to be in such third person, is held, in Sewell v. Norris, 128 Ga. 824, 58 S. E. 637, 13 L.R.A.(N.S.) 1118, to have no right to invoke the doctrine of estoppel against him.

See also Deeds.

Evidence. Statements by testator, either before or after the execution of his will, with respect to his intention to disinherit a child born after the execution of the will, are held, in Peet v. Peet, 229 Ill. 341, 82 N. E. 376, 13 L.R.A.(N.S.) 780, not to be admissible for the purpose of ascertaining his intention in that respect, under a statute which provides that, in case a child for whom no provision is made is born to the testator after the execution of the will, the devises and legacies shall abate to raise a portion for such child equal to that which he would have received had the testator died intestate, unless it appears "by such will" that it was the intention of the testator to disinherit such child; but it is held to be competent, for that purpose, to consider the language of the will in the light of the extrinsic circumstances surrounding the testator at the time of its execution.

The right to show by parol evidence that an instrument not on its face of a testamentary character was intended to take effect as a will, on which question there is but little authority, is denied in Noble v. Fickes, 230 Ill. 594, 82 N. E. 950, 13 L.R.A.(N.S.) 1203.

Fishing. See Waters.

Fraud. See Estoppel; Marriage.

Garnishment. The right to garnish funds in the hands of an officer of court after he has been ordered to pay the same to one of the parties, on which question the authorities are not entirely harmonious, is sustained in Boylan v. Hines (W. Va.) 59 S. E. 503, 13 L.R.A.(N.S.) 757.

Health. The power of the police jury to modify or nullify an ordinance adopted by the board of health of the parish forbidding the use of fish and shrimp-shell refuse as a fertilizer, as being a nuisance dangerous to public health, is denied in Naccari v. Rappelet, 119 La. 272, 44 So. 13, 13 L.R.A.(N.S.) 640.

Highways. The owner of a building abutting on a sidewalk upon which is insecurely fastened a pipe to carry water is held, in Mitchell v. Brady (Ky.) 99 S. W. 266, 13 L.R.A.(N.S.) 751, not to be absolved from liability for injury to a person on the walk by the fall of the pipe, by the fact that the building was in possession of a tenant who had obligated himself to keep it in repair.

The owner of the fee of a city street is held, in Colegrove Water Co. v. Hollywood (Cal.) 90 Pac. 1053, 13 L.R.A.(N.S.) 904, to have the right to lay a water pipe for his own use beneath the surface so far as he can do so without impeding the public use, and, for that purpose, to have the right to excavate the soil, subject to such restrictions by the municipality as will insure the least interruption to the public easement.

The liability of a municipal corporation for injuries from rough or uneven ice or snow accumulated from natural causes on a street or sidewalk not otherwise defective is sustained in Bull v. Spokane (Wash.) 89 Pac. 555, 13 L.R.A.(N.S.) 1105, where such condition has been permitted to remain for several weeks without any effort on the part of the city to remedy it.

The owner of the fee of a highway is held, in Hitchcock v. Zink (Neb.) 113 N. W. 795, 13 L.R.A.(N.S.) 1110, to have no right to complain that a sidewalk is being constructed thereon by private parties, where permission to

build the walk has been granted by the board of county commissioners.

And in Georgetown v. Hambrick, 31 Ky. L. Rep. 1276, 104 S. W. 997, 13 L. R.A.(N.S.) 1113, which seems to be a case of first impression on this exact point, it is held that a municipal corporation cannot arbitrarily prevent an abutting owner from constructing a sidewalk of a reasonable width in a street dedicated for public use.

In the absence of express statute imposing a liability on townships for injuries sustained from defects in highways, it is held, in James v. Wellston Twp. 18 Okla. 56, 90 Pac. 100, 13 L. R.A.(N.S.) 1219, that such townships are not liable in a civil action for damages for neglect of public duty in failing to keep the highways in a safe and proper condition. The other authorities on the question of liability of townships for defects in highways are collated in a note to this case.

See also Eminent Domain.

Homicide. One who has taken to his rooms for carousal a woman accustomed to debauchery and assignations is held, in People v. Beardsley, 150 Mich. 206, 113 N. W. 1128, 13 L.R.A. (N.S.) 1020, to owe her no such legal duty that he will be guilty of manslaughter if, after the lapse of two days, during which they have consumed much intoxicating liquor, when it becomes necessary for her to depart, she takes a drug with suicidal intent, and he does nothing to prevent her death, which results in due course.

In harmony with the weight of authority on the question, it has been held in two recent cases that the fact that, at the time of committing a homicide, one is so intoxicated that he does not know what he is doing, does not relieve him of the guilt of murder, although it may have some effect upon the degree of the crime. State v. Kidwell (W. Va.) 59 S. E. 494, 13 L.R.A.(N.S.) 1024; Atkins v. State (Tenn.) 105 S. W. 353, 13 L.R.A.(N.S.) 1031.

Hunting. See Waters.

Husband and wife. See Judgment.

Ice. See Highways.

Infants. See Negligence.

Injunction. See State.

Insurance. That a policy of life insurance is returned by the applicant because it does not correspond with his application, and is in possession of the company at the time of his death, is held, in Waters v. Security Life & Annuity Co. 144 N. C. 663, 57 S. E. 437, 13 L.R.A.(N.S.) 805, not to show a cancelation of the contract, where the company has insisted that it was all right, but has offered to take the matter up with applicant and make it right, without any offer to return the premium notes.

The right of insurance companies to provide in their policies that no officer, agent, or other representative of the company shall have the power to waive stipulations in the policy as to inventories and keeping of the books in a fireproof safe, unless the waiver is indorsed on the policy or added thereto, is sustained in Gish v. Insurance Co. of N. A. 16 Okla. 59, 87 Pac. 869, 13 L.R. A.(N.S.) 826; and such limited grant of authority is held to be the measure of the agent's power.

The officers of a mutual-benefit society are held, in Elliott v. Knights of Modern Maccabees (Wash.) 89 Pac. 929, 13 L.R.A.(N.S.) 856, to have no power to waive a by-law so as to admit persons of prohibited age.

And the knowledge of a soliciting agent of an insurance company who took an application, of the falsity of a material answer therein, is held, in Iverson v. Metropolitan L. Ins. Co. (Cal.) 91 Pac. 609, 13 L.R.A.(N.S.) 866, in the absence of any fraud or misrepresentation as to his authority to waive the conditions of the application, not to be imputable to the company so as to constitute a waiver, where the application warranted the answer to be true, and expressly limited the authority of the agent to waive the conditions of the application. An elaborate note to the L.R.A. report of these cases reviews the other authorities on effect of nonwaiver agreement on conditions existing at inception of insurance policy.

Under the cancelation clause in a standard policy of fire insurance, it is held, in Davidson v. German Ins. Co.

(N. J.) 65 Atl. 996, 13 L.R.A.(N.S.) 884, that the company is not required to pay or tender the unearned premiums in order to bring about a cancelation of the policy.

And the right of insured, after receiving notice from the insurer of the cancelation of the policy, to treat the same as in full force and effect until the company has paid or tendered him the unearned premium under the cancelation clause of the New York standard policy of fire insurance, is held, in Buckley v. Citizens' Ins. Co. 188 N. Y. 399, 81 N. E. 165, 13 L.R.A.(N.S.) 889, to be waived by his voluntary and unconditional surrender of the policy upon receiving the notice of cancelation.

A vendor of real estate who retains the title to secure payment of the purchase money, but unconditionally assigns the insurance on the buildings to the vendee, is held, in Zenor v. Hayes, 228 Ill. 626, 81 N. E. 1144, 13 L.R.A.(N. S.) 909, not to be entitled, in case the buildings are destroyed by fire, to resort to a court of equity to reach the proceeds of the policies, although the vendee is insolvent, if the debt is not due.

In accord with the conclusion of the California court in construing a statute substantially identical in language, it is held, in Equitable Life Assur. Soc. v. Babbitt (Ariz.) 89 Pac. 531, 13 L.R.A. (N.S.) 1046, that a statutory provision that every contract of life insurance shall contain a provision for the application of the reserve to the purchase of extended insurance in case of forfeiture for nonpayment of premiums, under penalty of having the license of the insurer withdrawn, does not become part of an insurance policy which does not contain the provision.

The words "dividend additions," as used in the New York statute providing for the application thereof to lapsed policies, are held, in United States L. Ins. Co. v. Spinks, 29 Ky. L. Rep. 960, 96 S. W. 889, 13 L.R.A.(N.S. 1053, to refer to that part of the premiums charged which was "loaded" onto the premium in excess of its share of expenses and loss sustained; and such additions and earnings thereon which constitute the surplus, it is held must be valued and applied in buying extended insurance for lapsed policies in force three years or longer, in the same way that the "reserve" of the policy is required to be valued and applied in purchasing such extended insurance.

Intoxicating liquors. The validity of a statute making it a crime for the owner or proprietor of a saloon to permit females under the age of twenty-one years to remain in or about the saloon is sustained in State v. Baker (Or.) 92 Pac. 1076, 13 L.R.A.(N.S.) 1040.

Judgment. On the grounds that, during the life of the husband, the interest of the wife in his estate is not a vested one, but a mere expectancy or possibility contingent upon her surviving the husband, it is held, in Stitt v. Smith, 102 Minn. 253, 113 N. W. 632, 13 L.R. A.(N.S.) 723, that she is not a necessary party to an action against the husband for the purpose of determining that the husband held the title to certain real estate as mortgagee and not as owner; and that, therefore, judgment having been entered in such action to that effect, the wife is bound by the decree, and not entitled to litigate the same question in another action subsequently brought against her for the purpose of removing an apparent cloud on the title.

On the question of what is necessary to render binding upon a covenantor a decree establishing a paramount title against his grantee, upon which the decisions are varied, it is held, in Morgan v. Haley (Va.) 58 S. E. 564, 13 L.R.A. (N.S.) 732, that he must not only have been notified of the suit, but requested to appear and defend.

A deficiency decree in an action to enforce a vendor's lien is held, in Johnson v. McKinnon (Fla.) 45 So. 23, 13 L.R.A.(N.S.) 874, to be absolutely void, and subject to collateral attack.

See also Marriage.

Landlord and tenant. See Highways.

Libel and slander. An allegation of illegitimacy of one seeking to review an executor's account as a child entitled to the estate under the terms of a will,

for the purpose of showing absence of right to review, is held, in Kemper v. Fort, 219 Pa. 85, 67 Atl. 991, 13 L.R.A. (N.S.) 820, to be absolutely privileged, and not actionable in favor of the child's mother, although false.

License. See Constitutional Law.

Lien. See Equitable Mortgage; Judgment.

Limitation of actions. The rule that a subsequent promise will remove the bar of the statute of limitations is held, in Nelson v. Petterson, 229 Ill. 240, 82 N. E. 229, 13 L.R.A.(N.S.) 912, not to apply to actions *ex delicto*.

The statute of limitations is held, in Morse v. Hayes, 150 Mich. 597, 114 N. W. 397, 13 L.R.A.(N.S.) 1200, not to be suspended during the period allowed by statute to the personal representative of a creditor for bringing action on the claim.

That a personal action on a note secured by a trust deed is barred by the statute of limitations is held, in Foot v. Burr (Colo.) 92 Pac. 236, 13 L.R.A. (N.S.) 1210, not to bar the contract remedy of sale by the trustee under the terms of the trust deed.

Logs. See Taxes.

Lotteries. A scheme to form a fund by the payment of certain sums per week by the holders of certificates, which shall mature in order of number, and which, when matured, shall be satisfied by payment of approximately double the amount paid in, not exceeding a certain fixed sum, is held, in Fitzsimmons v. United States (C. C. App. 9th C.) 156 Fed. 477, 13 L.R.A.(N.S.) 1095, to be a lottery, within the provisions of the Federal statute forbidding the carrying in the mails of any letter or circular concerning any lottery.

Mandamus. The question, Who is the *de facto* mayor of a city, whose orders are to obeyed by the disbursing officers? is held, in McKannay v. Horton (Cal.) 91 Pac. 598, 13 L.R.A.(N.S.) 661, to be properly determined in a mandamus proceeding against the latter to compel payment of salary under an order of one of the rival claimants to the office, where there is no other adequate and available remedy to relieve the situation.

The obligation imposed upon a telephone company by the acceptance of a condition in a municipal ordinance granting the right to use the streets, that the company shall file statements of its gross receipts and pay a certain percentage thereof into the city treasury, is held, in Chicago v. Chicago Teleph. Co. 230 Ill. 157, 82 N. E. 607, 13 L.R.A.(N.S.) 1084, to be contractual, and not enforceable by mandamus.

Manslaughter. See Homicide.

Marriage. A representation by an epileptic that she has not had an attack for eight years, although false, is held, in Lyon v. Lyon, 230 Ill. 366, 82 N. E. 850, 13 L.R.A.(N.S.) 996, not to be such fraud as will justify the annulment of a marriage with her, entered into in reliance thereon.

A prohibition in a decree of divorce against the remarriage of the guilty party during the lifetime of the other is held, in Dimpfel v. Wilson (Md.) 68 Atl. 561, 13 L.R.A.(N.S.) 1180, to have in general no extraterritorial effect.

Master and servant. The law requiring masters to provide reasonably safe tools and appliances for their servants is held, in Vanderpool v. Partridge (Neb.) 112 N. W. 318, 13 L.R.A.(N.S.) 668, to have no application where the servant possesses ordinary intelligence and knowledge, and the tools and appliances furnished are of a simple nature, easily understood, and in which defects can be readily observed by the servant.

So, also, a master is held, in Meyer v. Ladewig, 130 Wis. 566, 110 N. W. 419, 13 L.R.A.(N.S.) 684, to be under no obligation to a servant to inspect for defects a hammer which was reasonably safe and free from obvious defects when furnished, although it was of peculiar construction and intended for use on iron or steel.

And a ladder is held, in Sheridan v. Gorham Mfg. Co. (R. I.) 66 Atl. 576, 13 L.R.A.(N.S.) 687, to be in the class of ordinary tools, with knowledge of the obvious imperfections in which a servant is chargeable equally with his

master when he attempts to use it in the course of his usual employment.

But in Rogers v. Roe (N. J.) 66 Atl. 408, 13 L.R.A.(N.S.) 691, it is held that a servant who knows that a tool or appliance furnished to him by his master is defective does not, on that account, assume the risk of injury resulting from its use, if the danger resulting from the defect is not obvious.

The turning on and off of the electric light in a mill as the exigencies of the business may require, under the varying conditions of the natural light, is held, in Miller v. Centralia Pulp & Water Power Co. (Wis.) 113 N. W. 954, 13 L.R.A.(N.S.) 742, not to pertain to the personal duty of the master to furnish a safe place to work, but to be a mere operative detail, the performance of which may be delegated to a servant.

Where the rules of a railroad company require the employees, in case of danger to the company's property, to unite to protect it; and where, in case of apparent danger to such property, a conductor orders his brakeman to stop a moving car,—it is held, in St. Louis & S. F. R. Co. v. Morris (Kan.) 93 Pac. 153, 13 L.R.A.(N.S.) 1100, that the brakeman, if he has no knowledge or notice to the contrary, may act upon the assumption that such car is furnished with the ordinary and proper appliances for the safety of employees in performing their duties.

A livery-stable keeper, and not one who hires a carriage, horses, and driver from him, is held, in Frerker v. Nicholson (Colo.) 92 Pac. 224, 13 L. R.A.(N.S.) 1122, to be liable for injuries to a third person by the negligence of the driver, where the hirer exercises no control over the latter other than telling him in a general way where to go.

Neither the conductor, nor engineer, nor brakeman, of a work train with which a freight train collides, is held, in Louisville & N. R. Co. v. Brown, 32 Ky. L. Rep. 1002, 106 S. W. 795, 13 L.R.A.(N.S.) 1135, to be a fellow servant of the head brakeman on the freight train, so as to preve nthis recovery from the master for their negligence.

The duty of a railroad company, either by statute, or at common law, to maintain gates at a crossing of a crowded street in a great city, is held, in Boucher v. New York, N. H. & H. R. Co. (Mass.) 82 N. E. 15, 13 L.R.A. (N.S.) 1177, to be one which cannot be delegated to an independent contractor, so as to relieve it from liability for the negligence of the gate keeper which results in injury to a traveler on the highway.

Track repairers who, in going to their work upon hand cars provided for their use by the railroad company, negligently overspeed the cars for their own amusement, causing one of them to fall from the car to his injury, are held, in Soderland v. Chicago, M. & St. P. R. Co. 102 Minn. 240, 113 N. W. 449, 13 L.R.A.(N.S.) 1193, to be engaged at the time of the accident in the performance of their duty to the master, and not to be acting without the scope of their authority in propelling the car.

A switchman who, in the performance of his duty, is required to ride on his engine while assisting in pulling a train out of the depot yards, is held, in Floody v. Great Northern R. Co. 102 Minn. 81, 112 N. W. 875, 13 L.R.A. (N.S.) 1196, to be entitled to recover from his master, the railroad company, for injuries received by reason of the negligence of the depot company's servants in operating a switch, since, for the occasion, the latter are held to become the servants of the railroad company.

A street car company which knowingly places in charge of a car a motorman who is incapacitated for such service because of overwork and loss of sleep is held, in Ft. Wayne & W. V. Traction Co. v. Crosbie (Ind.) 81 N. E. 474, 13 L.R.A.(N.S.) 1214, to be liable for injury to his coservant by his failure to observe a rule of the company, where such failure was due to his condition.

Mines. See Corporations.

Municipal Corporations. The liability of a municipality for negligence of an employee of its fire department in running down a traveler on the high-

way is denied in Higgins v. Superior (Wis.) 114 N. W. 490, 13 L.R.A.(N. S.) 994.

A municipal corporation which detains in the calaboose a person afflicted with smallpox, and burns his clothing upon the premises, is held, in Evans v. Kankakee, 231 Ill. 223, 83 N. E. 223, 13 L.R.A.(N.S.) 1190, not to be liable to occupants of adjoining apartments who allege that they contracted the disease from such acts.

See also Bonds; Constitutional Law; Eminent Domain.

Negligence. The unlawful sale of a poisonous drug to a minor eighteen years of age, a quantity of which was, by such minor, administered to another minor to his injury, is held, in McKibbin v. Bax (Neb.) 113 N. W. 158, 13 L.R.A.(N.S.) 646, not to create a cause of action in favor of the father of the latter for loss of his son's services and the expense of medicines and doctor's bills, on the ground that it cannot be said that the defendant might reasonably have anticipated that such use would be made of the drug.

One selling a gallon of kerosene with knowledge that one ninth part thereof was gasolene is held, in Morrison v. Lee (N. D.) 113 N. W. 1025, 13 L.R.A. (N.S.) 650, not to be liable to the purchaser for injuries resulting from its explosion, where he, with knowledge of the fact that a fire was burning in the stove, poured some of the contents of the mixture directly from the can into the stove, on the ground that, even assuming that the oil was standard kerosene, the purchaser was, as matter of law, guilty of negligence proximately contributing to the injury.

A lessee of an unimproved city lot, whose occupancy and use of it is visible, constant, and, for the purposes of his business, exclusive, although the public is permitted to cross and recross it, and children are not prevented from playing on it, is held, in Habina v. Twin City General Electric Co. 150 Mich. 41, 113 N. W. 586, 13 L.R.A.(N. S.) 1126, not to be liable for injury to a child which, after dark, attempts to cross it without following any definite path, and falls into a ditch filled with hot water which the lessee has necessarily opened to repair a waste pipe, although he has taken no precaution to prevent such injury.

See also Master and Servant.

Nuncupative will. See Wills.

Officers. See Arrest; Mandamus.

Poll tax. Overruling its former decision in State v. Ide, 35 Wash. 576, 67 L.R.A. 280, 102 Am. St. Rep. 914, 77 Pac. 961, the supreme court of Washington holds, in Tekoa v. Reilly (Wash.) 91 Pac. 769, 13 L.R.A.(N.S.) 901, that the constitutional requirement that taxation by municipal corporations shall be uniform in respect of persons and property is not violated by a statute authorizing cities to impose a street poll tax upon every male inhabitant of the city over the age of twenty-one years, by reason of its exemption of all females and males under the age of twenty-one years; this latter decision being more in accord with the decisions of the courts of other jurisdictions.

Pollution. See Waters.

Postoffice. The doctrine in respect to the latitude which is accorded to a merchant in commending or puffing his goods is held, in Harris v. Rosenberger, 76 C. C. A. 225, 145 Fed. 449, 13 L.R.A. (N.S.) 762, to afford no justification to one conducting a mail-order business, against whom the Postoffice Department has issued a fraud order, where he was guilty in his advertisements of making false representations of material facts which were in their nature calculated to deceive, and were made with intent to deceive.

See also Contracts; Lotteries.

Principal and surety. See Bonds.

Railroads. The right of the owners of a steam railroad to compensation for the crossing of its track at a public-high way intersection by an electric interurban road built upon the highway with the consent of the board of commissioners of the county is denied in South East & St. L. R. Co. v. Evansville & Mt. V. Electric R. Co. (Ind.) 82 N. E. 765, 13 L.R.A.(N.S.) 916.

One attempting to cross a train standing on a private crossing which

he is entitled to use, with a live engine attached to or near it, which is liable to move the train at any time, is held, in Jones v. Illinois C. R. Co. 31 Ky. L. Rep. 825, 104 S. W. 258, 13 L.R.A.(N. S.) 1066, to act at his peril; and the company is held not liable for injury to him by moving the train while he is in a position of peril, unless his danger is discovered in time to prevent the accident.

And one who attempts, by invitation of a brakeman, to cross through a train standing without unnecessary delay on a public crossing, is held, in Southern R. Co. v. Clark, 32 Ky. L. Rep. 69, 105 S. W. 384, 13 L.R.A.(N.S.) 1071, to be a trespasser, to whom the company owes no duty until his peril is discovered.

But, where a railroad company permitted a train to block a street crossing for an hour, during which time numerous persons had crossed the train in the presence of the brakeman, or under such circumstances that the train operatives ought to have anticipated that persons might be in the act of crossing, it is held, in Gesas v. Oregon Short Line R. Co. (Utah) 93 Pac. 274, 13 L.R.A.(N.S.) 1074, to have been negligence in moving the train without warning, although it did not have notice that at the time some particular person was in a position of danger.

See also Master and Servant.

Reformation of instruments. The mere fact that the intending purchaser of real estate knows of an outstanding lease of property, and directs the broker, who is the vendor's agent, to prepare an absolute warranty deed, without mentioning the lease, is held, in Weinhard v. Summerville (Wash.) 89 Pac. 490, 13 L.R.A.(N.S. 1089, not to be sufficient to entitle the vendor to a reformation of the instrument on the ground of fraud, if he signs it without protest or suggestion that the lease be excepted.

Removal of causes. That a motion of a nonresident defendant corporation to remove a cause to the Federal court will not be denied where the trial has demonstrated that the allegation of the petition against a resident defendant joined in the action cannot be sustained, although the original petition of removal, on the ground of fraudulent joinder of such resident defendant, had been properly denied in the pleadings, is declared in Dudley v. Illinois C. R. Co. 29 Ky. L. Rep. 1029, 96 S. W. 835, 13 L.R.A.(N.S.) 1186.

Sale. One who, after payments have become due, takes possession without aggravating circumstances of household furniture sold by him on condition, from a woman who is attending to her own work, with nothing to indicate that she will suffer substantial impairment of health from his act, is held, in Flaherty v. Ginsberg (Iowa) 110 N. W. 1050, 13 L.R.A.(N.S.) 1132, not to be liable to her in damages because, after her furniture is taken, her attempt to reach friends results in miscarriage.

See also Attachment.

Snow. See Highways.

State. A Federal court is held, in Ex parte Young, 209 U. S. 123, 52 L. ed. —, Adv. S. U. S. 1907, p. 441, 28 Sup. Ct. Rep. 441, 13 L.R.A.(N.S.) 932, to have power to enjoin the attorney general of a state from proceeding to enforce a state statute which violates the Federal Constitution, such a proceeding not being prohibited by the provision of the Federal Constitution forbidding the maintenance of actions against a state.

But in State v. Southern R. Co. (N. C.) 59 S. E. 570, 13 L.R.A.(N.S.) 966, a contrary decision is reached.

Statute of frauds. See Adverse Possession.

Statutes. See State.

Street railways. See Master and Servant.

Support. See Equitable Mortgage.

Taxes. Upon the question, When do logs intended for exportation pass beyond the state's power of taxation? it is held, in State v. Taber Lumber Co. 101 Minn. 186, 112 N. W. 214, 13 L.R. A.(N.S.) 800, that the mere piling of logs at a certain spot, from which it is intended to export them from the state in which they were produced,

does not render them articles of interstate commerce, so as to exempt them from state taxation; which holding has the support of the few other decisions in which the question has been discussed.

See also Adverse Possession; Constitutional Law; Poll Tax.

Telephones. See Mandamus.

Vendor and purchaser. See Insurance; Judgment; Reformation of Instruments.

Waters. A private corporation which, by the construction of its works, and without authority of the legislature, improves the navigation of a stream, is held, in Bigham Bros. v. Port Arthur Canal & Dock Co. (Tex.) 97 S. W. 686, 13 L.R.A.(N.S.) 656, not to be able to avoid liability for injury to riparian owners by polluting the stream with salt water, on the theory that the state might have authorized the improvement of the stream free from responsibility for injury inflicted.

The mere fact that a right of navigation arises in the public by the raising of water over private property by the improvement of an adjoining river is held, in Schulte v. Warren, 218 Ill. 108, 75 N. E. 783, 13 L.R.A.(N.S.) 745, not to carry with it the right to hunt and fish upon the property.

The right to an injunction to restrain a mill owner from discharging into a stream, oils, chemicals, and dyestuffs in such quantities as to pollute the water to such an extent that the cattle of a lower riparian proprietor refuse to drink it is sustained in MacNamara v. Taft (Mass.) 83 N. E. 310, 13 L.R.A. (N.S.) 1044.

One burying a carcass on his own land is held, in Long v. Louisville & N. R. Co. 32 Ky. L. Rep. 774, 107 S. W. 203, 13 L.R.A.(N.S.) 1063, not to be liable for its pollution of a neighbor's spring, unless the circumstances were such that he should, as a person of reasonable prudence, have anticipated that such result would follow.

Wills. On the question what is "last sickness," permitting a nuncupative will, a middle course between those cases constituting the weight of authority, which hold that, in order to satisfy this condition, a testator must, at the time of making his declarations, be *in extremis*, and without time or opportunity to reduce his wishes to a written form, and those cases which, in opposition, hold that the condition is satisfied if, at the time of making the will, the testator supposes that his then sickness will prove his last, is adopted in Re Miller (Wash.) 91 Pac. 967, 13 L.R.A.(N.S.) 1092, where it is held that the last sickness does not mean a sickness when the testator is *in extremis*, when there is no time or opportunity to reduce a will to writing, but a sickness which has progressed to a point where testator expects death at any time, is liable to die at any time, and in fact does die from such sickness, and, in view of its occurrence and as preparatory thereto dictates, the will.

Women. See Intoxicating Liquors.

INTERNATIONAL RELATIONS

The 14th Lake Mohonk Conference of International Arbitration, at its recent session, adopted a platform commending the work of the Hague Conference, noting the existence of fifty or more arbitration treaties concluded within the last five years, commending the activity of educational institutions, business, professional, and labor organizations toward the prevention of war, and rejoicing in the final act of the Hague Conference for future meeting. It declared that the measures which were adopted at the Second Hague Conference constituted a great and welcome advance toward the regulation of international relations upon the basis of justice, reason, and respect for law.

Popular interest in the international

relations of the Western Hemisphere was greatly stimulated by the recent establishment in Washington of the Bureau of American Republics, which may be called the clubhouse of American nations. Such an institution must powerfully, though quietly, operate as an influence for good fellowship and comradeship among the nations of this hemisphere.

The offer of $100,000 by Andrew Carnegie for the purpose of erecting at Cartago, Costa Rica, a temple of peace for the exclusive use of the Central American Court of Justice is another practical expression of the donor's earnestness as an advocate of peace. The inauguration of such a court for the Central American nations, like the establishment of the Bureau of American Republics at Washington, and the International Court at The Hague, adds another proof of the increasing sentiment of the world that justice and fraternity are better than war.

As commissioners to represent the United States on the joint international commission to investigate the opium question in the Orient, the President has appointed Thomas Burke, a lawyer of Seattle, Dr. Hamilton Wright, of Maine, and Dr. Charles D. Tenny, Chinese Secretary of the American Legation at Pekin. The joint commission will meet on January 1st next in Shanghai. In the meantime, Dr. Tenny will study the situation in China, and Messrs. Burke and Wright will study the situation in the United States and the Philippine islands.

ENGLISH NOTES

A bill of old-age pensions passed its second reading in the House of Commons on June 16th without opposition. But important modifications of it are predicted before its final passage.

Some suggestion of a day when, by peaceful evolution, the United Kingdom of Great Britain and Ireland shall be part of a world-encircling system of federated republics, is offered by a proposed federation of the self-governing South African states, similar to the Dominion of Canada and the Australian commonwealth. This is the aim of a movement that was started recently at Pretoria by delegates from the different colonies, who agreed upon the principle of closer union, and asked for a national convention to frame the draft of a Federal Constitution. Cape Colony, the Transvaal, the Orange River Colony, and Natal were asked to act on the proposed union. In all, except Natal, the Boer or African element preponderates. Following so soon after the desperate Boer War, it is to be supposed that the English government may have some anxiety about the movement; but it does not appear to oppose it. It is a question whether the growth of democracy in the world is more conspicuously shown by the United States than it is by the development of self-government in England itself and in her great republics.

Some strikingly contrasted sentences by English magistrates are reported in one of the English newspapers. For beating a horse over the head until it fell down unconscious, a man was fined 40 shillings, while another was sent to prison for fourteen days at hard labor for sleeping in the playground of a boys' school. For stealing a fowl, a man was sent to prison for three months at hard labor, while another man was fined 2 shillings and sixpence for striking his wife in the face with his fist and rendering her unconscious. If this is making the penalty fit the crime, the property rights in a fowl must be many times as valuable as the protection of a woman against brutality. But American justice may be just as queer.

JUDGES AND LAWYERS

Edward Terry Stanford, of Knoxville, Tennessee, who has been assistant attorney general of the United States, was recently appointed judge of the United States court for Eastern Tennessee. Judge Stanford is but forty-two years old, and graduate of the University of Tennessee in 1883, Harvard in 1885, and Harvard Law School in 1889. He has been a lecturer in the Law Department of the University of Tennessee and president of the Tennessee Bar Association.

Edward P. Farrell, prominent member of the Bar of Lexington, Kentucky, and one of the best-known citizens of that city, died on May 13th. Mr. Farrell was forty-six years old. He was a successful lawyer. Early in his career he was city attorney and prosecuting attorney. In later years he had taken no part in politics. He was widely known as a brilliant orator and after-dinner speaker.

Ex-Judge Elbert H. Gary, Chairman of the Board of Directors of the United States Steel Corporation, has just been admitted to the Bar of the state of New York. He practised law in Illinois for many years.

Franklin Chase Hoyt, who has been assistant corporation counsel in New York city, and the mayor's legal adviser has been appointed judge of the court of special sessions to succeed Judge John B. McKean. Judge Hoyt is a graduate of Columbia University and New York Law School.

John Bell McKean, for nine years a justice of the court of special sessions in New York, died a few days since. He was a descendant of Andrew Jackson on his mother's side. He was admitted to the bar in 1863. He was for many years police-court clerk in Harlem, and for nearly twenty years a judge, first of the municipal court, and then of the court of special sessions.

Frederick Jesup Stimson, widely known as an able lawyer, legal author, and law lecturer at Harvard University, and formerly assistant attorney general of Massachusetts, has recently published a work on the Law of the Federal and State Constitutions of the United States, which will be received with much appreciation. It analyzes and classifies the constitutional provisions of the nation and states in a lucid way, while it shows the historical development of those provisions in England and in this country.

Henry M. Hill, a well-known attorney of Rochester, New York, died June 16th. He was a graduate of Genesee Wesleyan Seminary, Syracuse University and the Michigan University Law School. He had been in practice in Rochester for thirty years.

Judge Norman H. Conklin, of the superior court of San Diego, California, died a few days since at the age of sixty-nine years. He was one of the well-known judges of California. He was prominent in the masonic circle of the state, and veteran of the Civil War.

John M. Scribner, who was a third cousin of Daniel Webster, and had been a practising lawyer of New York city for about forty-seven years, died on June 16th. He graduated from Union College in 1859. He represented the street railway companies of New York as trial lawyer in a great number of cases.

Ex-Justice David Leventritt, who recently resigned from the supreme-court bench in New York, was guest of honor recently at a dinner of the Lawyers' Association. High tributes were paid to the retiring judge. These came from such speakers as Ex-Judge William J. Wallace, Ex-Judge Morgan J. O'Brien, and Judge Almet F. Jenks. In the few years that Judge Leventritt has been on the bench he has earned a high place in the esteem and confidence of the bar of New York.

Judge Denis O'Brien, of the New York court of appeals, who has recently returned from abroad, where he observed the procedure of the English courts, is reported in an interview to the effect that the court of appeals is far in advance of any court in Europe. He says: "It is hard for foreigners to understand the power of our courts,—that it is possible for the state courts to set aside laws, and that the Supreme Court of the United States can undo the work of Congress is quite beyond their comprehension."

Mr. Justice Harlan, of the United States Supreme Court, has just celebrated his 75th birthday. Commissioned November 29, 1877, and taking his seat December 10th, he has been an Associate Justice of the United States for more than thirty years. Honored by the nation, with the wife of his youth still beside him, and with sons whose character and abilities must give him pleasure, his life may be counted as fortunate as it is distinguished.

Judge G. W. A. Hapai, for thirty years district magistrate for South Hilo on the island of Hawaii, has resigned on account of ill health. Though he speaks English, he has always conducted the business of his office in Hawaiian, and it has often been necessary to have the testimony of witnesses translated into four different languages before the judge was satisfied with his understanding of it. He is the son of a Chinese.

NEW AND PROPOSED LEGISLATION

Proposed amendments to the United States Constitution are recommended to Congress by the state of Oklahoma, and most vigorously advocated by an executive proclamation of Governor Haskell. The amendments are for the election of United States senators by popular vote, for an income tax, for conferring power on Congress to make an employer's liability law for carriers in interstate and foreign commerce, with others to protect the states in the regulation of carrying charges and the merging of competing common carriers within the state, and in regulating or prohibiting the shipment into a state of articles injurious to health or morals, and of the products of convict labor.

A new highway law is adopted in New York which creates a revolution in the conditions in that state respecting highways, and provides for the first time something that deserves the name of a system of highway laws in that state.

LAW SCHOOLS

Quite outside the usual class of law schools is the College of the Political Sciences connected with the George Washington University, Washington, District of Columbia. This is an institution supplying advanced instruction in the political sciences and systematic training for the public, diplomatic, and consular service. It gives specialized training in government administration, international law, diplomacy, economics, finance, sociology, and history. It aims to fit students for consular and diplomatice positions, and for public service generally. The next session begins September 30, 1908; but students may also enter at the beginning of the second half year, February 1st. This

institution is similar to Ecole Libre des Sciences Politiques, of Paris, and the London School of Economics and Political Science. It indicates somewhat definitely the growth of a new era in our public service in which special fitness for a position will count for more than campaign services.

The National University Law School of Washington recently held its thirty-ninth annual commencement, at which some valuable sets of books were given as prizes by prominent law-publishing houses.

Graduate students are admitted to the Department of Law in Pennsylvania University if they have received the degree of Bachelor of Laws, or an equivalent degree, from a law school belonging to the Association of American Law Schools. To obtain the degree of Master of Laws, registration as such graduate for one or more scholastic years is necessary, in addition to the presentation and publication of a worthy thesis, in addition to the passing of the examinations.

The article on "Roman Law and Mohammedan Jurisprudence," part 3 of which appeared in the Michigan Law Review for March, is from the hand of Professor Theodore P. Ion, of the Boston University Law School, who was formerly connected with the English courts of Constantinople, and there became thoroughly acquainted with Mohammedan customs and institutions.

The Boston University School of Law has received a bequest of $2,000 from John Ordronaux, M. D,. LL. D., formerly lecturer in the school, on Medical Jurisprudence. Professor N. T. Abbott has just been appointed Professor of Law, and Frank L. Simpson, John E. Mason, and James T. Keen, assistant professors in that institution, while Frederick O. Downes is made an instructor. Hereafter evidence is to be given more prominence in this law school, the work therein running through three years. The modern aspects of animus and the legislative oversight of public corporations are given special attention. This law school recently published a pamphlet on Unity in Modern Education, which has been favorably received.

NEW BOOKS

"New York Civil Procedure Reports." Vol. 38. Annotated by Judson S. Rumsey. Law Canvas, $3.

"Complete Ohio Digest." Vol. 5. By Charles E. Everett. Buckram, $6.

"Whittaker's Ohio Probate Code." 1 vol. $4.

"The New York Banking Law, 1908." By Amasa J. Parker. Buckram, $2.50.

"International Law Applied to the Russo-Japanese War." By Sakuye Takahashi. 1 vol. Cloth, $8.

"A History of English Law." By W. S. Holdsworth. Vol. 1. Cloth, $4.

"Modern Jury Trials and Advocates." By Judge J. W. Donovan. 4th ed. Buckram, $4.50.

"Federal Procedure at Law." By C. L. Bates. 2 vols. English Buckram, $12 net.

"Monopoly and Trade Restraint Cases." By John Lewson. 2 vols. Buckram, $10 net.

"Insurance Enactments of 1907." 3d ed. Cloth, $10.

"The Land Title Registration Law 1908." Known as the Torrens System of Realty Titles. (New York.) Paper, 50 cents.

Shepard's "Massachusetts Citations." Complete to date. $10.

"The Commerce Clause of the Federal Constitution." By F. Hale Cooke. Law Canvas, $4.50.

"Constitutional Government in the United States." By Woodrow Wilson. Cloth, $1.50 net.

"Iowa Justice Practice and Forms." By Leonard B. Robinson. Buckram, $6.50.

"Corporate Organization." By Thomas Conyington. Enlarged edition. Buckram, $3.

"Corporation Law of Maryland." Edited by Henry W. Williams. (Baltimore. George W. King Printing Co.) 1908. 1 vol. $2.50.

This volume of the corporation law of Maryland is annotated with references to the decisions, and contains a collection of corporation forms, making a most convenient hand book.

RECENT ARTICLES IN LAW JOURNALS AND REVIEWS

"The Circuit System." 43 Law Journal, 316.

"Legacies on Impossible or Illegal Conditions Precedent." 3 Illinois Law Review, 1.

"The Character of Government Depends upon Its Legal Procedure." 3 Illinois Law Review, 24.

"The Data of Professional Ethics." 3 Illinois Law Review, 29.

"The Power of a State to Restrict the Right of a Foreign Corporation to Remove Cases to the United States Courts—Concluded." 40 Chicago Legal News, 330.

"The Folly of State Oil Inspection." 66 Central Law Journal, 403.

"The Methods and Conditions of Legislation in Our Time." 14 Kansas Lawyer, 3.

"Special Elections as Affected by Section 18 of the Schedule." 14 Virginia Law Register, 81.

"Origin and Growth of Criminal Responsibility." 7 Criminal Law Journal of India, 113.

"Liability of Stockholders to Creditors of a Missouri Corporation upon Unpaid Stock." 66 Central Law Journal, 424.

"Disappearance of the Fiduciary Principle." 16 American Lawyer, 247.

"Legal Tender Money vs. Monopolized Currency." 16 American Lawyer, 254.

"An Invasion by Express Companies." 16 American Lawyer, 260.

"The Taxation of Inheritance—A Consideration of the Legislation Recommended by President Roosevelt." 40 Chicago Legal News, 347.

"The Criminal Appeal Rules, 1908 (con.)." 72 Justice of the Peace, 254.

"Method of Procedure against Joint Obligors Where One is a Resident of the State and the Other a Nonresident." 15 The Bar, 26.

"The Law of Bank Checks (Practical Series)." 25 Banking Law Journal. 367.

"The Intention and Wisdom of the Division of Legislative Power Between Congress and the States." 56 American Law Register, 361.

"When is a Bank the Bona Fide Owner of a Check Left for Deposit or Collection?" 56 American Law Register, 375.

"Sir Matthew Hale." 56 American Law Register, 384.

"The Erection and Maintenance of Buildings." 66 Central Law Journal, 443.

"Spendthrift Trusts for Their Creators." 12 The Forum, 265.

"Liability for Waste. I. At Common Law." 8 Columbia Law Review, 425.

"Progress in Land Title Transfers; The New Registration Law of New York." 8 Columbia Law Review, 438.

"The Sherman Anti-Monopoly Act and Proposed Amendments." 8 Columbia Law Review, 452.

"The Evolution of the English Joint-Stock Limited Trading Company. II." 8 Columbia Law Review, 461.

"What Constitutes an Express Warranty in the Law of Sales." 21 Harvard Law Review, 555.

"Uniformity of Law in the Several States as an American Ideal. IV.

State Courts versus Federal Courts." 21 Harvard Law Review, 583.

"Constitutional Questions Involved in the Commodity Clause of the Hepburn Act." 21 Harvard Law Review, 595.

"Judge George Gray." 20 Green Bag, 277.

"The Charles River Bridge Case. (Exclusiveness of franchise for bridge.)" 20 Green Bag, 284.

"Langdell Hall and the Earlier Buildings of the Harvard Law School." 20 Green Bag, 297.

"German Ideals Concerning Private Law." 20 Green Bag, 306.

"Marxism versus Socialism. I." 23 Political Science Quarterly, 193.

"Protection and Capital." 23 Political Science Quarterly, 220.

"The Early English Colonial Movement. II." 23 Political Science Quarterly, 242.

"Church and State in France." 23 Political Science Quarterly, 259.

"Turkey in Europe." 23 Political Science Quarterly, 297.

"Rights of Minority Stockholders." 44 Canada Law Journal, 339.

"What Persons Are within the Purview of Statutes Affecting the Enforcement of Claims for Services." 44 Canada Law Journal, 369.

"The Relationship of the State and National Courts." 42 American Law Review, 321.

"The Oklahoma Constitution." 42 American Law Review, 362.

"The Scientific Aspect of Due Process of Law and Constructive Crimes." 42 American Law Review, 369.

"Economics from a Legal Standpoint." 42 American Law Review, 379.

"The Parajillas." 42 American Law Review, 387.

"Inherent and Acquired Difficulties in the Administration of Punitive Justice." 14 Kansas Lawyer, 3.

"Are Cities and Towns Liable for Negligence in the Management of Public Parks?" 66 Central Law Journal, 463.

"Our Anglo Saxon System of Trial by Jury." 40 Chicago Legal News, 351.

"Historical Lights from Judicial Decisions." 40 Chicago Legal News, 354.

"Street Sprinkling and Constitutional Law." 36 National Corporation Reporter, 613.

"Carriers—When Required to Receive Goods for Shipment." 36 National Corporation Reporter, 613.

THE HUMOROUS SIDE

A Horse on the Court.—In Gibbs v. State, 34 Tex. 135, is this sample of stern justice: "The judgment in this case must be reversed, because of a fatal error in the verdict of the jury. The defendant was indicted for the theft of a gelding and the jury found him guilty of "horse stealing." He was therefore indicted and tried for one offense and the jury found him guilty of another."

Tempers the Wind.—A New Jersey justice is reported to have reduced the amount of fines in his court for the present on account of the hard times. With this concession, business in his court may pick up some. It is said, on the authority of Laurence Sterne, that God tempers the wind to the shorn lamb. In New Jersey it seems to be tempered to the black sheep.

Fair Play in Court.—In a civil suit in a justice's court, where plaintiff had two attorneys and defendant one, when the second attorney for plaintiff rose to close the argument the justice interfered in the interests of fair play, saying, "Hold on there. No two lawyers can jump on one man in this court."

Glad He Wa'n't Mad.—An item in the Youth's Companion tells of the appreciativeness of a Georgia moonshiner. He was convicted in Federal court. The judge lectured him on his long criminal record, but assured him that,

notwithstanding this, the court felt no anger toward him,—only pity; and closed by giving him a sentence of six years in prison. The moonshiner stolidly listened, first to the kindly words, and then to the severe sentence, but said nothing until he was outside the courtroom. Then, shifting his tobacco in his mouth, he said to the marshal: "Well, I shua am glad he wa'n't mad at me."

A Natural Borned Gifted Agent.—A modest Texan puts the following printed notice on his envelopes:

In 7 days return to H. A. ————. W———— Texas. I was raised in Ark. Farmed 15 yrs, Taught School 13 yrs., Sold Merchandise 21 yrs. Auctioneered 2 yrs. Never had but one Father and one Mother, and only one wife. Never failed burned out or was Sued. Never smoked Cigarette. Stold a Horse, Killed a Man, or Voted an Old Party Ticket. I sold Life and Fire Insurance, Real Estate, and was Book Agent 2 yrs. I am a natural borned gifted Agent, and never found it out till one year ago. I just moved to W———— Texas and want a Job, Traveling as Agent.

I give as Reference any Merchant or Bank in W———— Texas.

H——— A——— Realty Co.

An African Gazelle.—A superlative specimen of lawyers' letterheads comes to us from a correspondent in Liberia, Africa. Here it is in full, except proper names:

———— ————

Lawyer

"He that loveth pleasure shall be a poorman." — Chancellor Solomon of Jerusalem Asia.

"Practices in every Court on this benighted slope. Criminal and Collection cases specialties. Expert title perfector, buys and sells mortgages and makes loans. Am the kinky-headed, smooth-faced, freckle-punctured Legal Africanus of this Zone, and always in the field. Active as the Nocturnal Roe-Buck. Lion-like in battle, but gentle as the Gazelle.

Fees Are the Sinews of Battle."

Probation in a Justice's Court.—The "initiative" that characterizes Americans and keeps them on the very edge of the expanding rim of the world's progress, according to some of our home-grown philosophers and observers, is notably characteristic of our justices of the peace. The following entry of judgment on a justice's docket seems to be a cross between an acquittal and the appointment of a receiver of the person: "After a very moderate and very eloquent appeal for the defendant by his attorney, the court, taking into consideration all of the circumstances, and knowing from experience that promises made for a client during my term as justice of the peace for over three years by attorney G. C. I———— have always been kept, and that the said G. C. I———— never fools the court, I hereby order that the defendant go from this court and admonish him to be good; for, if he breaks the promise he and his attorney have made this day, God help him. Case dismissed."

Successful Lawyers read Case & Comment every month to keep posted on new decisions, new publications and current topics of peculiar interest to them.

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